

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3113**

**OFFERED BY MRS. WILSON AND MR. GREEN OF
TEXAS**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Unsolicited Commer-
3 cial Electronic Mail Act of 2000”.

4 SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

5 (a) FINDINGS.—The Congress finds the following:

6 (1) There is a right of free speech on the Inter-
7 net.

8 (2) The Internet has increasingly become a crit-
9 ical mode of global communication and now presents
10 unprecedented opportunities for the development and
11 growth of global commerce and an integrated world-
12 wide economy. In order for global commerce on the
13 Internet to reach its full potential, individuals and
14 entities using the Internet and other online services
15 should be prevented from engaging in activities that
16 prevent other users and Internet service providers
17 from having a reasonably predictable, efficient, and
18 economical online experience.

1 (3) Unsolicited commercial electronic mail can
2 be an important mechanism through which busi-
3 nesses advertise and attract customers in the online
4 environment.

5 (4) The receipt of unsolicited commercial elec-
6 tronic mail may result in costs to recipients who
7 cannot refuse to accept such mail and who incur
8 costs for the storage of such mail, or for the time
9 spent accessing, reviewing, and discarding such mail,
10 or for both.

11 (5) Unsolicited commercial electronic mail may
12 impose significant monetary costs on Internet access
13 services, businesses, and educational and nonprofit
14 institutions that carry and receive such mail, as
15 there is a finite volume of mail that such providers,
16 businesses, and institutions can handle without fur-
17 ther investment. The sending of such mail is increas-
18 ingly and negatively affecting the quality of service
19 provided to customers of Internet access service, and
20 shifting costs from the sender of the advertisement
21 to the Internet access service.

22 (6) While some senders of unsolicited commer-
23 cial electronic mail messages provide simple and reli-
24 able ways for recipients to reject (or “opt-out” of)
25 receipt of unsolicited commercial electronic mail

1 from such senders in the future, other senders pro-
2 vide no such “opt-out” mechanism, or refuse to
3 honor the requests of recipients not to receive elec-
4 tronic mail from such senders in the future, or both.

5 (7) An increasing number of senders of unsolic-
6 ited commercial electronic mail purposefully disguise
7 the source of such mail so as to prevent recipients
8 from responding to such mail quickly and easily.

9 (8) Many senders of unsolicited commercial
10 electronic mail collect or harvest electronic mail ad-
11 dresses of potential recipients without the knowledge
12 of those recipients and in violation of the rules or
13 terms of service of the database from which such ad-
14 dresses are collected.

15 (9) Because recipients of unsolicited commercial
16 electronic mail are unable to avoid the receipt of
17 such mail through reasonable means, such mail may
18 invade the privacy of recipients.

19 (10) In legislating against certain abuses on the
20 Internet, Congress should be very careful to avoid
21 infringing in any way upon constitutionally protected
22 rights, including the rights of assembly, free speech,
23 and privacy.

1 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
2 POLICY.—On the basis of the findings in subsection (a),
3 the Congress determines that—

4 (1) there is substantial government interest in
5 regulation of unsolicited commercial electronic mail;

6 (2) Internet service providers should not be
7 compelled to bear the costs of unsolicited commercial
8 electronic mail without compensation from the send-
9 er; and

10 (3) recipients of unsolicited commercial elec-
11 tronic mail have a right to decline to receive or have
12 their children receive unsolicited commercial elec-
13 tronic mail.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) CHILDREN.—The term “children” includes
17 natural children, stepchildren, adopted children, and
18 children who are wards of or in custody of the par-
19 ent, who have not attained the age of 18 and who
20 reside with the parent or are under his or her care,
21 custody, or supervision.

22 (2) COMMERCIAL ELECTRONIC MAIL MES-
23 SAGE.—The term “commercial electronic mail mes-
24 sage” means any electronic mail message that pri-
25 marily advertises or promotes the commercial avail-

1 ability of a product or service for profit or invites
2 the recipient to view content on an Internet web site
3 that is operated for a commercial purpose. An elec-
4 tronic mail message shall not be considered to be a
5 commercial electronic mail message solely because
6 such message includes a reference to a commercial
7 entity that serves to identify the initiator.

8 (3) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

10 (4) DOMAIN NAME.—The term ‘domain name’
11 means any alphanumeric designation which is reg-
12 istered with or assigned by any domain name reg-
13 istrar, domain name registry, or other domain name
14 registration authority as part of an electronic ad-
15 dress on the Internet.

16 (5) ELECTRONIC MAIL ADDRESS.—

17 (A) IN GENERAL.—The term “electronic
18 mail address” means a destination (commonly
19 expressed as a string of characters) to which
20 electronic mail can be sent or delivered.

21 (B) INCLUSION.—In the case of the Inter-
22 net, the term “electronic mail address” may in-
23 clude an electronic mail address consisting of a
24 user name or mailbox (commonly referred to as
25 the “local part”) and a reference to an Internet

1 domain (commonly referred to as the “domain
2 part”).

3 (6) INTERNET.—The term “Internet” has the
4 meaning given that term in section 231(e)(3) of the
5 Communications Act of 1934 (47 U.S.C. 231(e)(3)).

6 (7) INTERNET ACCESS SERVICE.—The term
7 “Internet access service” has the meaning given that
8 term in section 231(e)(4) of the Communications
9 Act of 1934 (47 U.S.C. 231(e)(4)).

10 (8) INITIATE.—The term “initiate”, when used
11 with respect to a commercial electronic mail mes-
12 sage, means to originate such message or to procure
13 the transmission of such message.

14 (9) INITIATOR.—The term “initiator”, when
15 used with respect to a commercial electronic mail
16 message, means the person who initiates such mes-
17 sage. Such term does not include a provider of an
18 Internet access service whose role is limited to han-
19 dling, transmitting, or retransmitting the message.

20 (10) PRE-EXISTING BUSINESS RELATION-
21 SHIP.—The term “pre-existing business relation-
22 ship” means, when used with respect to the initiator
23 and recipient of a commercial electronic mail mes-
24 sage, that either of the following circumstances exist:

25 (A) PREVIOUS BUSINESS TRANSACTION.—

1 (i) Within the 5-year period ending
2 upon receipt of such message, there has
3 been a business transaction between the
4 initiator and the recipient (including a
5 transaction involving the provision, free of
6 charge, of information requested by the re-
7 cipient, of goods, or of services); and

8 (ii) the recipient was, at the time of
9 such transaction or thereafter, provided a
10 clear and conspicuous notice of an oppor-
11 tunity not to receive further messages from
12 the initiator and has not exercised such op-
13 portunity.

14 (B) OPT IN.—The recipient has given the
15 initiator permission to initiate commercial elec-
16 tronic mail messages to the electronic mail ad-
17 dress of the recipient and has not subsequently
18 revoked such permission.

19 (11) RECIPIENT.—The term “recipient”, when
20 used with respect to a commercial electronic mail
21 message, means the addressee of such message.

22 (12) UNSOLICITED COMMERCIAL ELECTRONIC
23 MAIL MESSAGE.—The term “unsolicited commercial
24 electronic mail message” means any commercial
25 electronic mail message that is sent by the initiator

1 to a recipient with whom the initiator does not have
2 a pre-existing business relationship.

3 **SEC. 4. PROTECTIONS AGAINST UNSOLICITED COMMER-**
4 **CIAL ELECTRONIC MAIL.**

5 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
6 SAGES.—

7 (1) INCLUSION OF RETURN ADDRESS.—It shall
8 be unlawful for any person to initiate the trans-
9 mission of an unsolicited commercial electronic mail
10 message to any person within the United States un-
11 less such message contains a valid electronic mail
12 address, conspicuously displayed, to which a recipi-
13 ent may send a reply to the initiator to indicate a
14 desire not to receive any further messages.

15 (2) PROHIBITION OF TRANSMISSION AFTER OB-
16 JECTION.—If a recipient makes a request to a per-
17 son to be removed from all distribution lists under
18 the control of such person, it shall be unlawful for
19 such person to initiate the transmission of an unso-
20 licited commercial electronic mail message to such a
21 recipient within the United States after the expira-
22 tion, after receipt such request, of a reasonable pe-
23 riod of time for removal from such lists. Such a re-
24 quest shall be deemed to terminate a pre-existing
25 business relationship for purposes of determining

1 whether subsequent messages are unsolicited com-
2 mercial electronic mail messages.

3 (3) ACCURATE ROUTING INFORMATION.—It
4 shall be unlawful for any person who initiates the
5 transmission of any unsolicited commercial electronic
6 mail message to any person within the United States
7 to take any action that causes any Internet routing
8 information contained in or accompanying such
9 message—

10 (A) to be inaccurate;

11 (B) to be invalid according to the pre-
12 vailing standards for Internet protocols; or

13 (C) to fail to accurately reflect the routing
14 of such message.

15 (4) INCLUSION OF IDENTIFIER AND OPT-OUT.—
16 It shall be unlawful for any person to initiate the
17 transmission of any unsolicited commercial electronic
18 mail message to any person within the United States
19 unless the message provides, in a manner that is
20 clear and conspicuous to the recipient—

21 (A) identification that the message is an
22 unsolicited commercial electronic mail message;
23 and

24 (B) notice of the opportunity under para-
25 graph (2) not to receive further unsolicited

1 commercial electronic mail messages from the
2 initiator.

3 (b) ENFORCEMENT OF POLICIES BY INTERNET AC-
4 CESS SERVICE PROVIDERS.—

5 (1) AUTHORITY TO ESTABLISH POLICIES.—A
6 provider of Internet access service may enforce a
7 policy regarding unsolicited commercial electronic
8 mail messages, but only if such policy complies with
9 the requirements of paragraph (3).

10 (2) PROHIBITION OF TRANSMISSIONS IN VIOLA-
11 TION OF POSTED POLICY.—It shall be unlawful for
12 any person to initiate the transmission of an unsolic-
13 ited commercial electronic mail message to any per-
14 son within the United States in violation of a policy
15 governing the use of the equipment of a provider of
16 Internet access service for transmission of unsolic-
17 ited commercial electronic mail messages that meets
18 the requirements of paragraph (3).

19 (3) REQUIREMENTS FOR ENFORCEABILITY.—
20 The requirements under this paragraph for a policy
21 regarding unsolicited commercial electronic mail
22 messages are as follows:

23 (A) CLARITY.—The policy shall explicitly
24 provide that compliance with a rule or set of
25 rules is a condition of use of the equipment of

1 a provider of Internet access service to deliver
2 commercial electronic mail messages.

3 (B) PUBLICLY AVAILABILITY.—The policy
4 shall be publicly available by at least one of the
5 following methods:

6 (i) WEB POSTING.—The policy is
7 clearly and conspicuously posted on a
8 World Wide Web site of an Internet access
9 service whose Internet domain name is
10 identical to the Internet domain name of
11 the electronic mail address to which the
12 rule or set of rules applies.

13 (ii) NOTIFICATION IN COMPLIANCE
14 WITH TECHNOLOGICAL STANDARD.—Such
15 policy is made publicly available by the
16 provider of Internet access service in ac-
17 cordance with a technological standard
18 adopted by an appropriate Internet stand-
19 ards setting body (such as the Internet
20 Engineering Task Force) and recognized
21 by the Commission by rule as a fair stand-
22 ard.

23 (C) INTERNAL OPT-OUT LIST.—If the pol-
24 icy of a provider of Internet access service re-
25 quires compensation specifically for the trans-

1 mission of unsolicited commercial electronic
2 mail messages into its system, the provider
3 shall provide an option to its subscribers not to
4 receive any unsolicited commercial electronic
5 mail messages, except that such option is not
6 required for any subscriber who has agreed to
7 receive unsolicited commercial electronic mail
8 messages in exchange for discounted or free
9 Internet access service.

10 (4) OTHER ENFORCEMENT.—Nothing in this
11 Act shall be construed to prevent or limit, in any
12 way, a provider of Internet access service from en-
13 forcing, pursuant to any remedy available under any
14 other provision of Federal, State, or local criminal or
15 civil law, a policy regarding unsolicited commercial
16 electronic mail messages that complies with the re-
17 quirements of paragraph (3).

18 (c) PROTECTION OF INTERNET ACCESS SERVICE
19 PROVIDERS.—

20 (1) GOOD FAITH EFFORTS TO BLOCK TRANS-
21 MISSIONS.—A provider of Internet access service
22 shall not be liable, under any Federal, State, or local
23 civil or criminal law, for any action it takes in good
24 faith to block the transmission or receipt of unsolic-
25 ited commercial electronic mail messages.

1 (2) INNOCENT RETRANSMISSION.—A provider
2 of Internet access service the facilities of which are
3 used only as an intermediary, retransmitter, or relay
4 for unsolicited bulk commercial electronic mail mes-
5 sages transmitted in violation of subsection (a) shall
6 not be liable for any harm resulting from the trans-
7 mission or receipt of such electronic mail unless it
8 permits the transmission or retransmission of such
9 electronic mail with actual knowledge that the trans-
10 mission is prohibited by subsection (a) or subsection
11 (b)(2).

12 **SEC. 5. ENFORCEMENT.**

13 (a) GOVERNMENTAL ORDER.—

14 (1) NOTIFICATION OF ALLEGED VIOLATION.—
15 The Commission shall send a notification of alleged
16 violation to any person who violates section 4 if—

17 (A) a recipient or a provider of Internet
18 access service notifies the Commission, in such
19 form and manner as the Commission shall de-
20 termine, that a transmission has been received
21 in violation of section 4; or

22 (B) the Commission has other reason to
23 believe that such person has violated or is vio-
24 lating section 4.

1 (2) TERMS OF NOTIFICATION.—A notification
2 of alleged violation shall—

3 (A) identify the violation for which the no-
4 tification was issued;

5 (B) direct the initiator to refrain from fur-
6 ther violations of section 4;

7 (C) expressly prohibit the initiator (and
8 the agents or assigns of the initiator) from fur-
9 ther initiating unsolicited commercial electronic
10 mail messages in violation of section 4 to the
11 designated recipients or providers of Internet
12 access service, effective on the 3rd day (exclud-
13 ing Saturdays, Sundays, and legal public holi-
14 days) after receipt of the notification; and

15 (D) direct the initiator (and the agents or
16 assigns of the initiator) to delete immediately
17 the names and electronic mail addresses of the
18 designated recipients or providers from all mail-
19 ing lists owned or controlled by the initiator (or
20 such agents or assigns) and prohibit the
21 initiator (and such agents or assigns) from the
22 sale, lease, exchange, license, or other trans-
23 action involving mailing lists bearing the names
24 and electronic mail addresses of the designated
25 recipients or providers.

1 (3) COVERAGE OF MINOR CHILDREN BY NOTIFI-
2 CATION.—Upon request of a recipient of an elec-
3 tronic mail message transmitted in violation of sec-
4 tion 4, the Commission shall include in the notifica-
5 tion of alleged violation the names and electronic
6 mail addresses of any child of the recipient.

7 (4) ENFORCEMENT OF NOTIFICATION TERMS.—

8 (A) COMPLAINT.—If the Commission be-
9 lieves that the initiator (or the agents or as-
10 signs of the initiator) has failed to comply with
11 the terms of a notification issued under this
12 subsection, the Commission shall serve upon the
13 initiator (or such agents or assigns), by reg-
14 istered or certified mail, a complaint stating the
15 reasons for its belief and request that any re-
16 sponse thereto be filed in writing with the Com-
17 mission within 15 days after the date of such
18 service.

19 (B) HEARING AND ORDER.—If the Com-
20 mission, after an opportunity for a hearing on
21 the record, determines that the person upon
22 whom the complaint was served violated the
23 terms of the notification, the Commission shall
24 issue an order directing that person to comply
25 with the terms of the notification.

1 (C) PRESUMPTION.—For purposes of a de-
2 termination under subparagraph (B), receipt of
3 any transmission in violation of a notification of
4 alleged violation 30 days (excluding Saturdays,
5 Sundays, and legal public holidays) or more
6 after the effective date of the notification shall
7 create a rebuttable presumption that such
8 transmission was sent after such effective date.

9 (5) ENFORCEMENT BY COURT ORDER.—Any
10 district court of the United States within the juris-
11 diction of which any transmission is sent or received
12 in violation of a notification given under this sub-
13 section shall have jurisdiction, upon application by
14 the Attorney General, to issue an order commanding
15 compliance with such notification. Failure to observe
16 such order may be punishable by the court as con-
17 tempt thereof.

18 (b) PRIVATE RIGHT OF ACTION.—

19 (1) ACTIONS AUTHORIZED.—A recipient or a
20 provider of Internet access service may, if otherwise
21 permitted by the laws or rules of court of a State,
22 bring in an appropriate court of that State, or may
23 bring in an appropriate Federal court if such laws
24 or rules do not so permit, either or both of the fol-
25 lowing actions:

1 (A) An action based on a violation of sec-
2 tion 4 to enjoin such violation.

3 (B) An action to recover for actual mone-
4 tary loss from such a violation in an amount
5 equal to the greatest of—

6 (i) the amount of such actual mone-
7 tary loss; or

8 (ii) \$500 for each such violation, not
9 to exceed a total of \$50,000.

10 (2) ADDITIONAL REMEDIES.—If the court finds
11 that the defendant willfully, knowingly, or repeatedly
12 violated section 4, the court may, in its discretion,
13 increase the amount of the award to an amount
14 equal to not more than three times the amount
15 available under paragraph (1).

16 (3) ATTORNEY FEES.—In any such action, the
17 court may, in its discretion, require an undertaking
18 for the payment of the costs of such action, and as-
19 sess reasonable costs, including reasonable attorneys'
20 fees, against any party.

21 (4) PROTECTION OF TRADE SECRETS.—At the
22 request of any party to an action brought pursuant
23 to this subsection or any other participant in such
24 an action, the court may, in its discretion, issue pro-
25 tective orders and conduct legal proceedings in such

1 a way as to protect the secrecy and security of the
2 computer, computer network, computer data, com-
3 puter program, and computer software involved in
4 order to prevent possible recurrence of the same or
5 a similar act by another person and to protect any
6 trade secrets of any such party or participant.

7 **SEC. 6. EFFECT ON OTHER LAWS.**

8 (a) NO EFFECT ON CRIMINAL LAW.—Nothing in this
9 Act shall be construed to impair the enforcement of sec-
10 tion 223 or 231 of the Communications Act of 1934, chap-
11 ter 71 (relating to obscenity) or 110 (relating to sexual
12 exploitation of children) of title 18, United States Code,
13 or any other Federal criminal statute.

14 (b) STATE LAW.—No State or local government may
15 impose any civil liability for commercial activities or ac-
16 tions in interstate or foreign commerce in connection with
17 an activity or action described in section 4 of this Act that
18 is inconsistent with the treatment of such activities or ac-
19 tions under this Act, except that this Act shall not pre-
20 empt any civil remedy under State trespass or contract
21 law or under any provision of Federal, State, or local
22 criminal law or any civil remedy available under such law
23 that relates to acts of computer fraud or abuse arising
24 from the unauthorized transmission of unsolicited com-
25 mercial electronic mail messages.

1 **SEC. 7. FEDERAL TRADE COMMISSION STUDY INTO EF-**
2 **FFECTS OF UNSOLICITED COMMERCIAL ELEC-**
3 **TRONIC MAIL.**

4 Not later than 18 months after the date of enactment
5 of this Act, the Federal Trade Commission shall submit
6 a report to the Congress that provides a detailed analysis
7 of the effectiveness and enforcement of the provisions of
8 this Act and the need (if any) for the Congress to modify
9 such provisions.

10 **SEC. 8 SEPARABILITY.**

11 If any provision of this Act or the application thereof
12 to any person or circumstance is held invalid, the remain-
13 der of this Act and the application of such provision to
14 other persons or circumstances shall not be affected.

15 **SEC. 9. EFFECTIVE DATE.**

16 The provisions of this Act shall take effect 90 days
17 after the date of enactment of this Act.